

11-2804-cr

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**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

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UNITED STATES OF AMERICA,

Appellee,

-v.-

**CHRISTIAN GATON,**

Defendant - Appellant,

Jorge Abreu, Rudy Palma, Rafael Figueroa, AKA Rafael Beato, AKA Liro, AKA Camaron, Jose Hidalgo, AKA C.O. Shield 11440 Jose Rosario, AKA Jose Amaurys, Jimmy Ortiz, Pedro Ventura, Roberto Cristian Urena Almonte, AKA Villa Lona, AKA Christian Urena, AKA Roberto Almonte, Leocadio Hidalgo, AKA C.O. Leo, Leonardo Roque-Santana, AKA Luis M. Mendoza, Guillermo Delacruz, Quilvio Santana, AKA Mayimbe, Victor Diaz, AKA White Horse, Jeffrey Blake, Humberto Sanchez, AKA Chamo, Defendants.

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ON APPEAL FROM A JUDGMENT OF THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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**APPENDIX  
PART 3**

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Joyce C. London, Esq.  
JOYCE C. LONDON, P.C.  
*Attorney for Defendant-Appellant*  
*Christian Gaton*  
20 Vesey Street, Suite 400  
New York, NY, 10007  
212-964-3700

Michael A. Young  
*Of Counsel*



United States Attorney  
Southern District of New York

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The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

November 6, 2008

**BY FACSIMILE**

Joyce C. London, Esq.  
20 Vesey Street, Suite 400  
New York, N.Y. 10007

Re: **United States v. Christian Gaton,**  
**S4 02 Cr. 401 (KMW)**

Dear Ms. London:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Christian Gaton ("the defendant") to Count Six of the above-referenced Indictment. Count Six charges the defendant with using, carrying, possessing, and discharging a firearm during and in relation to a crime of violence and a drug trafficking crime, and aiding and abetting the same, thereby causing the death of Celeste Suazo through the use of a firearm, on or about November 6, 1994, in the Bronx, New York, in violation of Title 18, United States Code, Sections 924(j) and 2. Count Six carries a maximum sentence of life imprisonment, a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; a maximum term of five years of supervised release; and a \$100 special assessment. In addition to the foregoing, the Court must order restitution in accordance with Sections 3663, 3663A, and 3664 of Title 18, United States Code. The restitution is to be paid according to a plan established by the Court.

In consideration of the defendant's plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for causing the death of Celeste Suazo through the use of a firearm in November 1994, as charged in Count Six of the Indictment. In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges he/she is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

Joyce C. London, Esq.  
November 6, 2008  
Page 2

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G.") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. Because the defendant caused the death of Celeste Suazo through the use of a firearm, and aided and abetted the same, in violation of Title 18, United States Code, Sections 924(j) and 2, which killing was murder as defined in Title 18, United States Code, Section 1111(a), the base offense level is 43, pursuant to U.S.S.G. § 2A1.1.

2. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional one-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 40.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has two criminal history points, calculated as follows:

1. Pursuant to U.S.S.G. § 4A1.1(b), the defendant receives two criminal history points for a conviction dated March 14, 1996, in New York County Supreme Court, for Criminal Possession of a Loaded Firearm in the Third Degree, a Class D Felony, for which the defendant was sentenced to one year of imprisonment.

2. In accordance with the foregoing, the defendant's Criminal History Category is II.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated sentencing Guidelines range is 324 to 405 months (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 40, the applicable fine range is \$25,000 to \$250,000.

Joyce C. London, Esq.  
November 6, 2008  
Page 3

D. Other Agreements

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court *sua sponte* consider such a departure or adjustment.

The parties further agree that a sentence within the Stipulated Guidelines Range (324 to 405 months) would constitute a reasonable sentence in light of all of the factors set forth in Title 18, United States Code, Section 3553(a). However, the parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range, suggest that the Probation Department consider a sentence outside of the Stipulated Guidelines Range, and suggest that the Court *sua sponte* consider a sentence outside of the Stipulated Guidelines Range, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Sentencing range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see U.S.S.G. § 3E1.1*, and/or imposition of an adjustment for obstruction of justice, *see U.S.S.G. § 3C1.1*, regardless of any stipulation set forth above, should the defendant move to withdraw his guilty plea once it is entered, or should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

Joyce C. London, Esq.  
November 6, 2008  
Page 4

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offense authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal, nor litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any sentence within or below the Stipulated Guidelines Range set forth above (324 to 405 months) and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range (324 to 405 months). It is further agreed that any sentence within the Stipulated Guidelines range is reasonable. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks Act* material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

By entering this plea of guilty, the defendant also waives any and all right the defendant may have, pursuant to 18 U.S.C. § 3600, to require DNA testing of any physical evidence in the possession of the Government. The defendant fully understands that, as a result of this waiver, any physical evidence in this case will not be preserved by the Government and will therefore not be available for DNA testing in the future.

The defendant understands that he is bound by his guilty plea regardless of the immigration consequences of the plea and regardless of any advice the defendant has received from his counsel or others regarding those consequences. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on those consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack

Joyce C. London, Esq.  
November 6, 2008  
Page 5

challenging his guilty plea, conviction or sentence, based on the immigration consequences of his guilty plea, conviction and sentence.

It is further agreed that should the conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or

Joyce C. London, Esq.  
November 6, 2008  
Page 6

conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

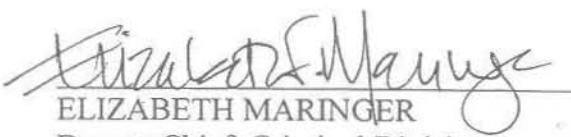
Very truly yours,

MICHAEL J. GARCIA  
United States Attorney  
Southern District of New York

By:

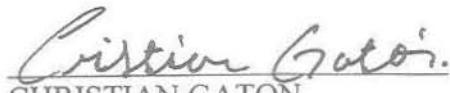
DAVID M. RODY  
Assistant United States Attorney  
(212) 637-2304

APPROVED:

  
ELIZABETH MARINGER

Deputy Chief, Criminal Division

AGREED AND CONSENTED TO:

  
CHRISTIAN GATON

DATE

APPROVED:

JOYCE C. LONDON, ESQ.  
Attorney for CHRISTIAN GATON

DATE

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
BT DOC #: _____
DATE FILED: 6/30/11
A CRIMINAL CASE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

CHRISTIAN GATON

JUDGMENT IN A CRIMINAL CASE

Case Number: 01-S4-02-CR-401-08 (KMW)

USM Number: 53320-054

Joyce London, Esq. (AU)

Joyce London, Esq. (AUSA David Rody  
Defendant's Attorney)

## THE DEFENDANT:

pleaded guilty to count(s) 6 (six)

pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.

was found guilty on count(s)  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC 924(j)(1)	Discharge of a Firearm in Relation to a Crime of Violence and Drug Trafficking Crime	11/6/1994	6

See additional count(s) on page 2

The defendant is sentenced as provided in pages through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) underlying indictment  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 29, 2011

### Date of Imposition of Judgment

*Paula M. Wad*  
Signature of Judge

KIMBA M. WOOD, U.S.D.J.

Name of Judge

**Title of Judge**

6-30-11

Date

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
v1 Sheet 2 — Imprisonment

DEFENDANT: CHRISTIAN GATON  
CASE NUMBER: 01: S4 02 CR 401-08 (KMW)

Judgment Page: 2 of 6

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:  
405 months, with credit for time served. This includes time spent in custody beginning July 17, 2005, the date the defendant was arrested on these charges.

- The court makes the following recommendations to the Bureau of Prisons:

*[if needed by] KMW  
defendant.*

That the defendant be incarcerated in a facility as close to New York as possible, in a facility that has wheelchair access. The Court recommends that the defendant receive a medical evaluation at a federal medical center.

- The defendant is remanded to the custody of the United States Marshal.

- The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before \_\_\_\_\_ on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CHRISTIAN GATON  
CASE NUMBER: 01: S4 02 CR 401-08 (KMW)

Judgment Page: 3 of 6

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of:  
5 years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: CHRISTIAN GATON  
CASE NUMBER: 01: S4 02 CR 401-08 (KMW)

Judgment Page: 4 of 6

### SPECIAL CONDITIONS OF SUPERVISION

The standard and mandatory conditions of supervised release apply, along with the following special conditions:

The defendant shall participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol. The Court authorizes the release of available drug treatment evaluations and reports to the substance abuse treatment provider, as approved by the probation officer. The defendant will be required to contribute to the costs of services rendered (copayment) in an amount to be determined by the probation officer, based on ability to pay or availability of third-party payment.

The defendant shall submit his person, residence, place of business, vehicle, or any other premises under his control to a search, on the basis that the probation officer has reasonable belief that contraband or evidence of a violation of the conditions of the release may be found. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to search pursuant to this condition.

The defendant shall obey the immigration laws and comply with the directives of immigration authorities.

The defendant is to report to the nearest Probation Office within 72 hours of release from custody.

The defendant shall be supervised by the district of his residence.

AO 245B (Rev. 09/08) Judgment in a Criminal Case  
v1 Sheet 5 — Criminal Monetary Penalties

DEFENDANT: CHRISTIAN GATON

Judgment Page: 5 of 6

CASE NUMBER: 01: S4 02 CR 401-08 (KMW)

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$ 0.00	\$ 0.00

The determination of restitution is deferred until \_\_\_\_\_, An *Amended Judgement in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>TOTALS</b>	\$0.00	\$0.00	

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/08) Judgment in a Criminal Case

v1 Sheet 6 — Schedule of Payments

Judgment Page: 6 of 6

DEFENDANT: CHRISTIAN GATON  
CASE NUMBER: 01: S4 02 CR 401-08 (KMW)

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ 100.00 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or

B  Payment to begin immediately (may be combined with  C,  D, or  F below); or

C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or

D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
  - The defendant shall pay the following court cost(s):
  - The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA

4 v.

02 CR 401 (KMW)

5 CHRISTIAN GATON,

6 Defendant.  
-----x

DOC # 179

8 New York, N.Y.  
9 July 16, 2009  
10 12:20 p.m.

11 Before:

12 HON. JAMES C. FRANCIS IV

13 Magistrate Judge

14 APPEARANCES

15 LEV L. DASSIN  
16 Acting United States Attorney for the  
Southern District of New York  
17 BY: DAVID M. RODY  
Assistant United States Attorney

18 JOYCE LONDON  
19 Attorney for Defendant

20 ALSO PRESENT  
21 Jordan Fox, Spanish Interpreter

22 073  
23  
24  
25

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(212) 805-0300

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA

4 v.

02 CR. 401 (KMW)

5 CHRISTIAN GATON,

6 Defendant.  
-----x

7  
8 New York, N.Y.  
9 July 16, 2009  
10 12:20 p.m.

11 Before:

12 HON. JAMES C. FRANCIS IV

13 Magistrate Judge

14 APPEARANCES

15 LEV L. DASSIN  
16 Acting United States Attorney for the  
Southern District of New York  
17 BY: DAVID M. RODY  
Assistant United States Attorney

18 JOYCE LONDON  
19 Attorney for Defendant

20 ALSO PRESENT  
21 Jordan Fox, Spanish Interpreter

22  
23  
24  
25 074

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

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1                   THE DEPUTY CLERK: This is United States v. Christian  
2 Gaton.

3                   Counsel, please state your names for the record.

4                   MR. RODY: Good afternoon, your Honor.

5                   Dave Rody, for the government.

6                   THE COURT: Good afternoon.

7                   MS. LONDON: Joyce London, for Mr. Gaton.

8                   Good afternoon, your Honor.

9                   THE COURT: Good afternoon.

10                  I think that the first order of business is to swear  
11 in the interpreter.

12                  (Spanish interpreter Jordan Fox sworn)

13                  THE COURT: Mr. Gaton, I am Judge Francis.

14                  The indictment in this case charges you in Count 6  
15 with violation of Title 18 of United States Code, Section  
16 924(j) which makes it an offense to use, carry, possess and  
17 discharge a firearm in connection with a crime of violence in a  
18 drug trafficking crime and with aiding and abetting such  
19 conduct. You have the right to enter your plea before a United  
20 States district judge, however, a United States magistrate  
21 judge may also take your plea provided that you consent to that  
22 procedure.

23                  I have before me a consent form. Have you read and do  
24 you understand that form and did you sign it?

25                  THE DEFENDANT: Yes, sir.

075

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

97GUGATP

1 THE COURT: I am going to ask you some questions in  
2 connection with your plea.

3 (Defendant sworn)

4 THE COURT: Please state your full name.

5 THE DEFENDANT: Christian DeJesus Gaton Ramos.

6 THE COURT: What is your education?

7 THE DEFENDANT: I finished high school.

8 THE COURT: Are you now or have you recently been  
9 under the care of a doctor or a psychiatrist for any reason?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: For what condition?

12 THE DEFENDANT: Psychiatric problems.

13 THE COURT: Psychiatric?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you taking any medications?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do those medications affect your ability  
18 to understand these proceedings in any way?

19 THE DEFENDANT: No.

20 THE COURT: Does your psychiatric condition itself  
21 interfere with your ability to understand these proceedings?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you ever been treated for alcoholism  
24 or drug addiction?

25 THE DEFENDANT: No, sir.

076

97GUGATP

1           THE COURT: Are you feeling all right today?

2           THE DEFENDANT: Yes, sir.

3           THE COURT: Have you received a copy of the indictment  
4 in this case, the document that charges you?

5           THE DEFENDANT: Yes, sir, I have.

6           THE COURT: Have you had it translated for you and do  
7 you understand what it says that you did?

8           THE DEFENDANT: Yes, your Honor.

9           THE COURT: Do you need me to read it to you?

10          THE DEFENDANT: No, sir.

11          THE COURT: Have you had time to talk to your attorney  
12 about the charges and about how you wish to plead?

13          THE DEFENDANT: Yes, sir.

14          THE COURT: Are you satisfied with your attorney?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: Are you ready to plead at this time?

17          THE DEFENDANT: Yes, sir.

18          THE COURT: What is your plea to Count 6?

19          THE DEFENDANT: Guilty, sir.

20          THE COURT: I need to determine whether your plea of  
21 guilty is voluntary and whether you fully understand the nature  
22 of the charges against you and the possible consequences of  
23 your plea, so I am going to ask you some additional questions.

24          MR. RODY: Judge, may we have one moment?

25          THE COURT: Sure.

077

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(Discussion off the record among counsel)

2 MR. RODY: Your Honor, I see that you are moving on  
3 from determining that the defendant is competent to plead, and  
4 both counsel have conferred and we agree with that  
5 determination. I would like to put one thing on the record in  
6 that connection. The defendant was evaluated at Butner medical  
7 facility this year in the spring of 2009, and there was a  
8 psychological report prepared. He was taking a number of  
9 medications before he went down to Butner, and he is still  
10 taking some medications now. I am not exactly sure which ones  
11 he is still taking, but I wanted to confirm that he is still  
12 suffering no ill effects from the medication that he was on  
13 before he went down to Butner.

If the Court could inquire on that issue, because that was really the reason that he was sent down to Butner, that the medication he was on before he went down there was, I think, interfering with his ability to understand, for example, a written document. But it is my understanding, and I believe counsel's understanding, that he is no longer having any such difficulty now.

21 MS. LONDON: Your Honor, just to add some  
22 clarification to that. The trip to Butner was, in effect,  
23 because Mr. Gaton had become pretty much a waste basket for  
24 every kind of powerful psychiatric and neuroleptic drug  
25 available, and there was no way to get him off of these

97GUGATP

1       medications -- or some of these medications -- without a  
2       hospital setting. And I think that he was up to maybe 24  
3       medications a day, including anti-seizure and anti-neuroleptic  
4       inhibitors and there was a lot of conflicts -- a lot of the  
5       drugs have been discontinued, and he is on a small number now.  
6       And we can have him affirm to the Court that he is able to  
7       think clearly now.

8                  THE COURT: Mr. Gaton, is it correct that before you  
9       went to a facility in North Carolina, you were suffering  
10      psychiatric effects from the drugs themselves, is that correct?

11                 THE DEFENDANT: Yes, sir.

12                 THE COURT: And is it also correct that while you were  
13       at the facility in North Carolina, they took you off a number  
14       of those drugs?

15                 THE DEFENDANT: Yes, sir.

16                 THE COURT: Are you now suffering any of the effects  
17       that you had been suffering before you went to the facility at  
18       North Carolina?

19                 THE DEFENDANT: No, sir.

20                 THE COURT: Anything else counsel would like to ask?

21                 MR. RODY: No, thank you, Judge.

22                 MS. LONDON: No, thank you.

23                 THE COURT: I remind you, Mr. Gaton, that the charge  
24       against you is the use, carrying, possession or discharging of  
25       a firearm in connection with a crime of violence and a drug

97GUGATP

1 trafficking crime and aiding and abetting that conduct and,  
2 specifically, the discharge of a firearm causing death.

3 The penalty provided by law is a term of imprisonment  
4 of up to life, a term of supervised release of up to five  
5 years, a maximum fine which is the greatest of \$250,000 or  
6 twice any gain derived from the offense or twice any loss to  
7 persons other than yourself as a result of the offense and a  
8 mandatory \$100 special assessment. Do you understand those  
9 penalties?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that as part of any  
12 sentence, the court will require that you make restitution to  
13 any victims of the crime?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you also understand that if you are  
16 sentenced to prison and released on supervised release and you  
17 violate the terms of supervised release, you would be returned  
18 to prison without credit for the time spent on supervised  
19 release? Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that if you are not a  
22 United States citizen, you would be subject to deportation on  
23 the basis of your conviction?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that you have the right

97GUGATP

1 to plead not guilty and the right to a jury trial on these  
2 charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that if you plead not  
5 guilty and go to trial, the burden would be on the government  
6 to prove your guilt beyond a reasonable doubt?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that at a trial you  
9 would be presumed innocent until the government proves your  
10 guilt?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that at a trial you  
13 would have the right to be represented by an attorney at all  
14 stages and, if necessary, an attorney would be appointed for  
15 you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that at a trial you  
18 would have the right to confront and question any witnesses who  
19 testify against you and the right not to be forced to testify  
20 against yourself?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that at a trial you  
23 would be entitled to testify in your own behalf, to present  
24 evidence, to call witnesses to testify and to subpoena those  
25 witnesses if necessary?

97GUGATP

1                   THE DEFENDANT: Yes, sir.

2                   THE COURT: Do you understand that if you plead  
3 guilty, there will be no trial of any kind and the trial  
4 related rights that I have just described will no longer apply  
5 and the only remaining step will be for the court to sentence  
6 you?

7                   THE DEFENDANT: Yes, sir.

8                   THE COURT: Do you understand the nature of the charge  
9 to which you are pleading?

10                  THE DEFENDANT: Yes, sir.

11                  THE COURT: Do you understand the range of penalties  
12 including the maximum sentence that you would receive on the  
13 basis of your plea?

14                  THE DEFENDANT: Yes, sir.

15                  THE COURT: Have you and your attorney talked about  
16 how the Sentencing Commission guidelines might apply to your  
17 case?

18                  THE DEFENDANT: Yes, sir.

19                  THE COURT: Do you understand that the court will not  
20 be able to determine the guidelines for your case until a  
21 presentence report has been prepared and you and the government  
22 have had the opportunity to challenge any facts reported there?

23                  THE DEFENDANT: Yes, sir.

24                  THE COURT: Do you also understand that after it has  
25 been determined what guideline applies to a case, the court has

97GUGATP

1       the authority in some circumstances to impose a sentence that  
2       is either more severe or less severe than that called for by  
3       the guidelines?

4             THE DEFENDANT: Yes, sir.

5             THE COURT: Do you understand that under some  
6       circumstances you or the government may have the right to  
7       appeal any sentence that is imposed?

8             THE DEFENDANT: Yes, sir.

9             THE COURT: Do you understand that there is no parole  
10      and that if you are sentenced to prison, you will not be  
11      released on parole?

12            THE DEFENDANT: Yes, sir.

13            THE COURT: Do you understand that the answers you  
14      give to me today under oath in the future may be used against  
15      you in a prosecution for perjury or false statement if you do  
16      not tell the truth?

17            THE DEFENDANT: Yes, sir.

18            THE COURT: Do you still wish to plead guilty?

19            THE DEFENDANT: Yes, sir.

20            THE COURT: Have any threats been made to you by  
21      anyone to influence you to plead guilty?

22            THE DEFENDANT: No, sir.

23            THE COURT: Have any promises been made concerning the  
24      sentence you would receive?

25            THE DEFENDANT: No, sir.

083

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97GUGATP

1           THE COURT: I have before me a plea agreement dated  
2 November 6, 2008, have you had that plea agreement translated  
3 for you, and do you understand it and did you sign it?

4           THE DEFENDANT: Yes, sir.

5           THE COURT: Now, that plea agreement sets forth a  
6 guideline sentencing range. Do you understand that if you are  
7 sentenced within or below that range, you may not appeal or  
8 otherwise challenge your sentence?

9           THE DEFENDANT: Yes, sir.

10          THE COURT: Do you also understand that you are  
11 agreeing that a sentence within that range will be a reasonable  
12 sentence under the law?

13          THE DEFENDANT: Yes, sir.

14          THE COURT: Do you understand that you may not appeal  
15 or otherwise challenge your conviction on the ground that the  
16 government has failed to produce discovery material or  
17 information that might tend to prove your innocence?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: Do you understand that you are waiving all  
20 rights to require DNA testing of any physical evidence and  
21 that, as a result, the government will not preserve such  
22 evidence?

23          THE DEFENDANT: Yes, sir.

24          THE COURT: Do you also understand that you are bound  
25 by your guilty plea regardless of any immigration consequences?

97GUGATP

1           THE DEFENDANT: Yes, sir.

2           THE COURT: Do you understand that if your plea is  
3 vacated for any reason, you are agreeing not to challenge any  
4 future prosecution on the ground that it is time barred?

5           THE DEFENDANT: Yes, sir.

6           THE COURT: Does the government wish to set forth on  
7 the record the elements that it would prove at trial?

8           MR. RODY: Yes, your Honor.

9           The government would prove first that on or about the  
10 dates alleged, the defendant used, carried and possessed a  
11 firearm, that he did so during and in relation to a crime of  
12 violence and a drug trafficking crime, that he caused the death  
13 of a person through the use of that firearm, that that death  
14 qualified as a murder and that the defendant acted knowingly,  
15 unlawfully and willfully.

16           THE COURT: Thank you.

17           Mr. Gaton, do you understand that if you were to go to  
18 trial, the government would have to prove these elements beyond  
19 a reasonable doubt?

20           THE DEFENDANT: Yes, sir.

21           THE COURT: Is your plea voluntary and made of your  
22 own free will?

23           THE DEFENDANT: Yes, sir.

24           THE COURT: Did you commit the offense charged?

25           THE DEFENDANT: Yes, sir.

97GUGATP

1           THE COURT: Tell me in your own words what you did.

2           THE DEFENDANT: In November of 1994, I used a weapon  
3           in order to shoot a drug dealer named Celeste Suazo in the  
4           Bronx. She died because of those gunshot wounds. The murder  
5           of Ms. Suazo was ordered by Mr. Elvis Espinosa because she was  
6           competing with Mr. Espinosa for a sales spot. I was working  
7           for Elvis Espinosa at this selling spot, and I participated in  
8           the distribution of more than five kilos of cocaine. I know  
9           that what I was doing was illegal.

10          THE COURT: Mr. Rody, does the government have any  
11         other questions that it wishes to be asked?

12          MR. RODY: Your Honor, I am thinking. One moment.

13          THE COURT: Sure.

14          MR. RODY: I would request that the Court inquire  
15         whether the defendant killed Celeste Suazo on behalf of the  
16         organization for which he was working or in furtherance of the  
17         organization for which he was working. He said that it was  
18         ordered by Espinosa and he said that he was working for  
19         Espinosa. I wanted to make sure that, in his mind, he was  
20         committing the murder on behalf of that organization.

21          THE COURT: Mr. Gaton, did you in fact commit that  
22         murder on behalf of Mr. Espinosa's drug organization?

23          THE DEFENDANT: Yes, sir.

24          MR. RODY: Thank you, Judge.

25          THE COURT: Mr. Rody, do you know any reason why the

97GUGATP

1 defendant should not plead guilty?

2 MR. RODY: No, Judge.

3 THE COURT: Ms. London, do you know of such reason?

4 MS. LONDON: No, your Honor.

5 THE COURT: I am satisfied that the defendant  
6 understands the nature of the charge against him and the  
7 consequences of a plea of guilty. I am also satisfied that the  
8 plea is voluntary and knowing and that there is a factual basis  
9 for it. I will therefore recommend that Judge Wood accept the  
10 defendant's plea of guilty to Count 6 of the indictment.

11 Do we have a sentencing date?

12 MR. RODY: There is. It is October 21, 2009, and I  
13 will tell Ms. London the time. I believe it is 10:30 or 11.

14 THE COURT: Very well. A presentence report will be  
15 prepared. Can the government provide the case statement to  
16 probation within the next two weeks?

17 MR. RODY: Yes, your Honor.

18 THE COURT: And, Ms. London, will you be available for  
19 your client's interview within that period?

20 MS. LONDON: Yes, your Honor. I wish to be present.

21 THE COURT: I take it that the defendant is detained.  
22 Any application can be taken up with Judge Wood.

23 Thank you.

24 MR. RODY: Thank you, Judge.

25 o o o

087

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